IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL APPLICATION (REVIEW) NO.13 OF 2005
IN
CIVIL REVISION APPLICATION NO.12 OF 2005

Shri Vishnu Bhudu Pawar (deceased)
through LRs:
(a) Chandrakant V. Pawar & Ors. .... Petitioners
Vs.
Smt. Maria Amanda Conceicao (deceased)
through Lrs:
(a) James Peter Marian & Ors. .... Respondents

Shri Zeller D'Souza for the Petitioners.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: FEBRUARY 16, 2006

ORAL ORDER:

1. Heard. The petitioners seek review of the order dated 26-8-2005, passed in Civil Revision Application No.12 of 2005, on the ground that there is error apparent on the face of the record in relation to the finding about sufficiency of representation in case of death of one of the parties, when only one out of number of legal representatives happens to be already on record and in that connection reliance is sought to be placed in the decisions of the Apex Court in the matter of Custodian of Branches of **Banco National**

Ultramarino v. Nalini Bai Naique, reported in 1989 Supp (2) SCC 275 and in the matter of **Daya Ram and others v. Shyam Sundari and others,** reported in AIR 1965 SC 1049.

2. According to the petitioners, one legal representative out of number of legal representatives cannot constitute sufficient representation of the estate of the deceased to avoid abatement of the proceedings. At the outset, it is to be noted, that no such ground was raised in the civil revision application. The learned Advocate appearing for the review petitioners, drawing attention to ground 7(a) in the memo of the revision application, sought to contend that it impliedly contains the said ground. The ground 7(a) of the memo of the revision application reads thus:

> "The Petitioner submits that once it is proved that the one of the defendants who was a party to the suit expired before the final arguments in the matter and that his legal heirs were not brought on record and that the right to sue did not survive against the surviving defendant then the suit necessarily had to abate as a whole and any decree passed

> in such circumstances without bringing the legal heirs on record within the period prescribed by law had to be a nullity. In as much as the Ld. Trial Court has not appreciated this aspect it has failed to exercise a jurisdiction vested in it by law or it has acted in the exercise of its jurisdiction illegally or with material irregularity."

Plain reading of the said ground nowhere discloses, nor even suggest remotely that the petitioners had sought to canvas the ground of the nature which is sought to be canvassed in this review application, and perhaps rightly so.

3. The learned single Judge while passing the order dated 26-8-2005 has clearly held that:

> "The contention of the learned counsel for the petitioners is devoid of any substance and merit. It is not in dispute that one of the sons of the first defendant was already party to the suit as defendant no.2. In a fact situation like

> this where one of the heirs of the deceased defendant no.1 was already on record, though in a different capacity, the question of abatement will not arise as the estate of the deceased was represented by one of the heirs who was already on record."

Above finding clearly finds support from both the decisions sought to be relied upon by the learned Advocate for the petitioners.

4. In **Nalini Bai Naique's** case (supra), the Apex Court had held that:

> ""Legal representative" as defined in Civil Procedure Code which was admittedly applicable to the proceedings in the suit, means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of

the party so suing or sued. The definition is inclusive in character and its scope is wide, it is not confined to legal heirs only instead it stipulates a person who may or may not be heir, competent to inherit the property of the deceased but he should represent the estate of the deceased person. ..... If there are many heirs, those in possession bona fide, without there being any fraud or collusion, are also entitled to represent the estate of the deceased. ..... The Custodian of the appellant Bank had no knowledge that there were other legal representatives of deceased defendant along with Mrs. Nalini Bai. He had filed affidavit that on making diligent and bona fide inquiry, he had come to know that Nalini Bai was the sole legal representative but later on the acquired knowledge that the deceased had left four sons and two daughters as legal representatives, along with Mrs. Nalini Bai, therefore, he made another application for bringing them on record. The

> trial Judge accepted the testimony of the Custodian, and placing reliance on the decision of Andhra Pradesh High Court in Mannem Venkataramaiyyah v. M. Munnemma (AIR 1963 AP 406) he allowed the substitution application. The trial court committed no error in law, instead he applied correct principles of law."

5. In **Daya Ram's** case (supra), the Apex Court held that:

> "the question in such cases is whether the estate of the deceased is properly and sufficiently represented for the purpose of defending the appeal and whether, in law, the estate can be so represented even when some of the heirs are, without fraud, or collusion, omitted to be brought on record."

6. Plain reading of the above decisions would disclose that for the purpose of representation of the estate, it does not depend upon the number of legal representatives of the deceased. What is

important is that the person or persons representing must be competent to represent the estate of the deceased person. The expression “properly and sufficiently represented” does not relate to number of legal representatives but refers to the capacity and absence of any fraud or collusion or omission on the part of the person representing the estate. Being so, it is immaterial, whether it is one or two or five who can be said to be sufficient to represent the estate. Even one legal representative, in the absence of any fraud being played in the process of bringing only one legal representative on record, would be sufficient.

7. It was also sought to be contended on behalf of the petitioners that in case of a suit for declaration of ownership rights, mere representation of the estate is not sufficient and in case of failure to bring all the legal representatives of the deceased party on record, it would result in abatement of the proceedings, and in that connection the decision of the Apex Court in Daya Ram's case was sought to be relied upon. Undoubtedly, in Daya Ram's case the dispute related to claim of 1/3rd share in the property by the plaintiff therein. However, as already observed above, the Apex Court therein has clearly stated that what is important is proper and sufficient representation for the purpose of defending the cause. It has

nowhere laid down in the said decision that for the purpose of defending the cause, any particular number of legal representatives or any particular percentage of legal representative would be necessary to avoid abatement.

8. In this regard, one can advantageously refer to the decision of the Apex Court in **N.K. Mohd. Sulaiman Sahib v. N.C. Mohd. Ismail Saheb and others,** reported in AIR 1966 SC 792. Therein it was held that:

> "Where on account of a bona fide error, the plaintiff seeking relief institutes his suit against a person who is not representing the estate of a deceased person against whom the plaintiff has a claim either at all or even partially, in the absence of fraud or collusion or other ground which taint the decree, a decree passed against the persons impleaded as heirs binds the estate, even though other persons interested in the estate are not brought on the record. This priciple is a part of the law of procedure which regulates all

matters going to the remedy and applies to all parties irrespective of their personal law."

Therein certain property was mortgaged by three Muslims to one person. One of the mortgagors died. The mortgagee finding that two mortgagors and three widows and a daughter of the deceased mortgagor were in possession of the mortgaged property, obtained a decree on his mortgage against them and in execution thereof purchased the property himself with permission of the Court. It was also found that the mortgagee had made bona fide enquiry and had not come to know about the existence of any other heirs. In those circumstances, it was held that, the principle of representation of the estate by the heirs who were joined as parties applied to the case and the decree was binding on persons who claimed to be the sons of the deceased mortgagor.

9. The **Andhra Pradesh High Court in Mannem Venkataramayya v. M. Munnemma and others**, reported in AIR 1963 A.P. 406, had held that if there are several legal representatives, it is sufficient if all the legal representatives known after due diligent enquiry are joined within the period of limitation. Merely because some of the representatives were left out on account of lack of

knowledge about them to the plaintiff, that would not result in abatement of the proceedings.

10. In the result, therefore, there being no error apparent on the face of the record in the order dated 26-8-2005, passed in the Civil Revision Application No.12 of 2005, there is no case made out for review and hence the review application is dismissed.

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